

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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Petition of US LEC Corp.)
for Declaratory Ruling)
Regarding LEC Access Charges)
for CMRS Traffic)
_____)

CC Docket No. 01-92

**COMMENTS OF McLEODUSA TELECOMMUNICATIONS SERVICES, INC., FOCAL
COMMUNICATIONS CORPORATION, AND CAVALIER TELEPHONE
ON PETITION FOR DECLARATORY RULING OF US LEC CORP.**

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ruling reaffirming that all LECs (including CLECs and ILECs) are entitled to recover access charges for CMRS traffic passed to IXCs.

1. Access Charge Payments Are Due to LECs (CLEC and ILEC) for CMRS Traffic

When a LEC (whether CLEC or ILEC) connects traffic from a CMRS carrier with the facilities of an IXC, the IXC should pay the LEC access charges for the traffic in question. Like US LEC, McLeodUSA, Focal and Cavalier also perform local exchange functions in providing access services to IXCs, and they agree with US LEC that there should be no dispute under the Commission's precedent and industry practice that a LEC is entitled to access charges when calls originate and/or terminate on a wireless network.

American consumers use their wireless phones to make interexchange calls. To accommodate that customer demand for service, CMRS providers either connect directly with IXCs or route such traffic through a LEC for connection with the IXC when the CMRS carrier does not have direct connections. When the traffic routed from the CMRS carrier is local, payments currently are made through the reciprocal compensation process, and are not addressed by the facts presented in the Petition. When the traffic in question is interexchange, either interstate or intrastate, access services are provided by the LEC to the IXC, and charges are properly assessed to the IXC pursuant to the LEC's interstate or intrastate switched access tariff.

II. Access Charges Are the Appropriate Current Intercarrier Compensation Mechanism for the Traffic in Question

Under the Communications Act and Commission Rules, access charges are the current system for payment by an IXC to a LEC for use of the LEC's network. The US LEC Petition does not, in any way, address or raise issues about traffic exchanged between competing local companies. US LEC's Petition does not raise concerns with reciprocal compensation arrangements nor with the efforts by CMRS companies to charge or receive payment of access

charges. US LEC's Petition presents an issue that involves simple non-payment of an access bill by an interexchange carrier for access traffic.'

As the Commission is aware, the current access charge system dates back to the late 1970s and early 1980s.² Since that time, the changing legal and market environment (in which new and incumbent companies were attempting to move provision of communications services from a monopoly to a more competitive environment) created a need for the Commission to adopt a formal system of tariffed "access charges" whereby LECs would provide interconnection to IXC, and IXC would compensate LECs for facilities and services used in originating and terminating long distance calls.

Although the Telecommunications Act of 1996 ("the Act") introduced new carrier compensation issues for the Commission to consider in the local market, the Act itself did not change the access charge regime.³ The Commission did recognize while implementing the Act that, over time, access charge rates and structure would need to evolve and change.⁴

McLeodUSA, Focal and Cavalier are aware that the Commission currently is in the process of reviewing access and other intercarrier compensation policies, and that it may revise some of its current policies.' While there should be no issue that existing rules remain in place while the Commission considers what, if anything, to do to reform intercarrier compensation, it appears to be necessary for the Commission to emphasize that carriers must continue to meet

¹ In addition, McLeod, Focal and Cavalier agree with US LEC that the CLEC access rate is not at issue here—as long as the tariffed rate charge for access service is at or below the benchmark level, it should be conclusively presumed to be just and reasonable. (See Petition at 9.)

² See generally *Access Charge Reform*, CC Docket 96-262, Sixth Report and Order, FCC 00-193, 15 FCC Rcd 12962 (2000). ("Access Charge Reform Order").

³ 47 U.S.C. § 251(g).

⁴ Access Charge Reform Order at 12965, ¶ 4.

⁵ *Developing a United Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 01-132, 16 FCC Rcd 9610 (2001).

their access payment obligations until any new rules are adopted and become effective.⁶ In this instance, it is clear that the relief requested by US LEC does not require any change in current policy—it only requires a statement that the Commission expects carriers to comply with existing access charge rules and policies.

III. An IXC's Refusal to Pay Exchange Access is an Unjust and Unreasonable Practice

Access charges are the current established intercarrier compensation method for traffic exchanged between an local exchange carrier and **an** interexchange carrier. Although some IXCs have disputed their liability for payment of access charges directly to CMRS carriers: the facts presented in the US LEC Petition do not involve questions regarding direct CMRS to IXC connections. Rather, an IXC has disputed payment to US LEC for CMRS traffic routed to the IXC via US LEC.

The refusal to pay access charges is an unjust and unreasonable practice under Section 201(b) of the Act. IXCs should not be permitted to segregate lawful traffic and unreasonably refuse to pay for transport for selected portions of that traffic. IXCs are paid by their customers for the interexchange traffic provided to the IXC via the LEC. A refusal to pay an access bill is an attempt to avoid paying for the costs the IXC causes on the LEC network, and

⁶ The Commission has stated that even if it implements new intercarrier compensation rules, the existing CLEC access charge regime will be in place until 2005. The Commission has stated:

One of the options under serious consideration in that proceeding is a move to a bill-and-keep regime, under which carriers would recover their costs from end users, rather than from interconnecting carriers. Even if we choose that route in the inter-carrier compensation proceeding, the rules we adopt today would not mandate bill-and-keep for CLEC access tariffs until a full four years after the effective date of this order.

In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, FCC 01-146, ¶ 53 (April 27,2001).

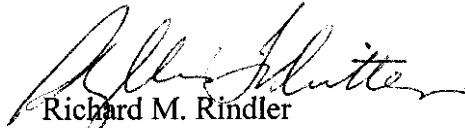
AT&T Petition for Declaratory Ruling, WT Docket No. 01-316 (filed October 22, 2001); Sprint PCS Petition for Declaratory Ruling, WT Docket No. 01-316 (filed October 22,2001).

is unlawful and unreasonable. The refusal to pay the LEC for exchange access services is a discriminatory practice, and the Commission should issue a declaratory ruling making clear that the IXC cannot implement a "pick and choose" plan for payment (or non-payment) of its access bills.

IV. The Commission Should Grant the US LEC Petition Expeditiously

The Commission should issue a declaratory ruling on an expedited basis reaffirming that all LECs (both ILEC and CLEC) may recover access charges from IXCs for CMRS traffic routed through the LEC to or from an IXC. A definitive ruling is necessary to remove any lingering legal/regulatory uncertainty in this matter, to resolve outstanding disputes and to prevent future questions. Therefore, McLeodUSA, Focal and Cavalier respectfully request that this Commission reaffirm that when CMRS traffic is routed through a LEC (CLEC or ILEC) to an IXC that access payments are due. The declaratory ruling requested by US LEC should be issued expeditiously by this Commission, and should apply to all LECs that carry similar traffic.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Ivonne Diaz, hereby certify that on this 18th day of October 2002, copies of the foregoing **COMMENTS OF McLEODUSA TELECOMMUNICATIONS SERVICES, INC., FOCAL COMMUNICATIONS CORPORATION, AND CAVALIER TELEPHONE ON PETITION FOR DECLARATORY RULING OF US LEC CORP.** were hand delivered to those parties listed below.

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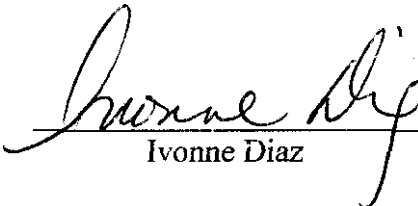
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